

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ALEJANDRA HERNANDEZ

Claimant

VS.

EXCEL CORPORATION

Self-Insured Respondent

)
)
)
)
)
)
)
)

Docket No. 270,516

ORDER

Claimant requests review of a January 17, 2003, preliminary hearing Order entered by Administrative Law Judge Pamela J. Fuller.

ISSUES

The claimant filed for a preliminary hearing seeking a change of treating physician. After the preliminary hearing was held, the Administrative Law Judge (ALJ) determined claimant had not met her burden of proof and denied her request for a change of treating physician.

Claimant argues the ALJ applied an incorrect standard of law to determine whether there should be a change of treating physician and that the uncontroverted medical evidence supports her request for a change of treating physician.

In respondent's brief, it argues the Board does not have jurisdiction to review the issue raised by the claimant. In the alternative, it argues the medical evidence supports the ALJ's determination and should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The only issue raised before the ALJ was claimant's request to change the authorized treating physician. This is an appeal from ALJ Pamela J. Fuller's denial of claimant's request for a change of treating physician.

The Board agrees with the respondent and concludes, at this juncture of the proceeding, it does not have jurisdiction to review this preliminary hearing order.

The Board's jurisdiction to review preliminary hearing issues and findings is generally limited to the following:¹

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?

Additionally, the Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.² Jurisdiction is generally defined as authority to make inquiry and decision regarding a particular matter. The jurisdiction and authority of a court to enter upon inquiry and make a decision is not limited to deciding a case rightly but includes the power to decide it wrongly. The test of jurisdiction is not a correct decision but the right to enter upon inquiry and make a decision.³

The Board has on other occasions determined that a request to change the authorized treating physician is the furnishing of medical treatment. The preliminary hearing statute found at K.S.A. 44-534a gives the ALJ authority to grant or deny the request for medical compensation pending a full hearing on the claim. Thus, the ALJ did not exceed her jurisdiction and the Board does not have jurisdiction to review the Judge's preliminary Order.

Finally, a comment should be made regarding claimant's brief and inclusion of statements, none of which were included in the transcript of the preliminary hearing or otherwise in the record, that the ALJ allegedly made to claimant's counsel prior to the preliminary hearing.

¹ K.S.A. 44-534a.

² K.S.A. 44-551.

³ See *Taber v. Taber*, 213 Kan. 453, 516 P.2d 987 (1973); *Provance v. Shawnee Mission U.S.D.* No. 512, 235 Kan. 927, 683, P.2d 902 (1984).

The Workers Compensation Act specifically provides that Board review is limited to the evidentiary record presented to the administrative law judge.⁴ Accordingly, the Board may not consider the ALJ's alleged off-the-record comments and inclusion of those comments in claimant's brief was improper. Therefore, those statements are disregarded.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.⁵

AWARD

WHEREFORE, the claimant's appeal is dismissed and Administrative Law Judge Pamela J. Fuller's Order dated January 17, 2003, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of April 2003.

BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant
D. Shane Bangerter, Attorney for Respondent
Pamela J. Fuller, Administrative Law Judge
Director, Division of Workers Compensation

⁴ K.S.A. 44-555c(a).

⁵ K.S.A. 44-534a(a)(2).